



HOUSE BILL 982: Modify Medicaid Subrogation Statute

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Reps. Burr, Avila
Analysis of: PCS to Second Edition
H982-CSTG-57

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SUMMARY: *The PCS for House Bill 982 permits a medical assistance beneficiary to rebut the statutory presumption of the amount of a beneficiary's tort recovery against a third-party that is subject to the State's right of reimbursement for Medicaid payments made on behalf of the beneficiary. The beneficiary must offer clear and convincing evidence to rebut the presumption. The PCS authorizes the court hearing a beneficiary's challenge to conclude, based on clear and convincing evidence, that the portion of the gross recovery representing compensation for medical expenses is more than the amount presumed under the statute.*

CURRENT LAW: G.S. 108A-57 provides that the State is subrogated to a medical assistance beneficiary's recovery against any person to the extent of the State's payments for health care items or services. Out of the proceeds of any recovery against a third party, the attorney representing a medical assistance beneficiary is required to distribute to the Department of Health and Human Services the amount of assistance paid by the Department on behalf of or to the beneficiary, prorated with all other claims of persons having medical subrogation rights or medical liens against the amount recovered, but not more than one-third of the gross amount recovered.

Federal Medicaid statutes require states to pursue recovery of the portion of a beneficiary's tort recovery that is for medical expenses, but prohibit the states from taking any other portion of the settlement. The federal statutes do not specify how the amount of the recovery representing payment for medical care should be determined.

In Andrews ex. Rel Andrews v. Haygood,¹ the North Carolina Supreme Court held that the statutory presumption that the medical portion of a beneficiary's settlement of tort claims against third parties was the lesser of the State's medical expenditures or one-third of the total settlement amount was a reasonable method for determining the amount the State was entitled to recover.

On March 20, 2013, Andrews was abrogated by the United States Supreme Court in Wos v. E.M.A ex rel. Johnson,² which held that G.S. 108A-57 was preempted under federal law to the extent that it could be interpreted as creating a conclusive presumption that one-third of the beneficiary's tort recovery represents compensation for medical expenses, instead of providing a process for determining what amount of the recovery was for medical expenses.³

¹ Andrews ex rel. Andrews v. Haygood, 362 N.C. 599, 669 S.E.2d 310 (2008) abrogated by Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391 (U.S. 2013).

² Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391 (2013).

³ "The defect in § 108A-57 is that it sets forth no process for determining what portion of a beneficiary's tort recovery is attributable to medical expenses. Instead, North Carolina has picked an arbitrary number—one-third—and by statutory command labeled that portion of a beneficiary's tort recovery as representing payment for medical care. Pre-emption is not a



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BILL ANALYSIS: The PCS to House Bill 982 would amend G.S. 108A-57 to establish a procedure by which a beneficiary can seek a judicial determination of the amount of the recovery that was for medical expenses if the beneficiary disagrees with the statutory presumption.

The PCS would require any personal injury or wrongful death claim brought by or on behalf of a medical assistance beneficiary to include a claim ("the Medicaid claim") for all medical assistance payments for health care items or services furnished to the beneficiary as a result of the injury.⁴

If the Medicaid claim for all medical assistance payments for health care items or services furnished to the beneficiary as a result of the injury does not exceed one-third of the gross recovery, it would be presumed that the recovery represents compensation for the full amount of the Medicaid claim. If the Medicaid claim is for more than one-third of the gross recovery, then the PCS would presume that the amount of the recovery representing medical expenses is one-third of the total.⁵

A beneficiary wishing to dispute the presumption would have to file an application with a court in which the claim against the third-party is pending, or if none, to a court of competent jurisdiction. The application would have to be filed and served on the Department of Health and Human Services no later than 30 days after the date of any settlement with, or entry of judgment against, the third party.⁶

The presumption could be rebutted only by clear and convincing evidence,⁷ and would not be rebutted solely by evidence that the beneficiary did not recover the full amount of all claims.⁸ The court could consider any factors it deemed just and reasonable in making its determination.⁹ The PCS replaced language stating that the parties could agree to a compromise of the Medicaid claim amount at any time with language permitting the court to conclude, based on clear and convincing evidence, that the portion of the beneficiary's gross recovery representing the Medicaid claim was more than the amount presumed under the statute.¹⁰

If the beneficiary does not dispute the statutory presumption, the statutorily presumed amount must be paid to the Department within 30 days of the beneficiary's receipt of the proceeds.¹¹ The Department would be permitted to apply to the court for enforcement of the State's rights under this section.¹²

EFFECTIVE DATE: This act is effective when it becomes law and applies to medical assistance beneficiaries claims against a third party which either have been settled or in which judgment has been entered on or after the effective date. If a claim has been settled or a judgment entered against a third party before the effective date, and the Medicaid claim has not been satisfied, the beneficiary will have 90 days from the effective date of the act to dispute the presumption by application to the court.

matter of semantics. A State may not evade the pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute's intended operation and effect." Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391, 1398 (2013).

⁴ G.S. 108A-57(a).

⁵ G.S. 108A-57(a1).

⁶ G.S. 108A-57(a2).

⁷ G.S. 108A-57(a2)(1).

⁸ G.S. 108A-57(a2)(2).

⁹ G.S. 108A-57(a2)(3).

¹⁰ G.S. 108A-57(a2)(4).

¹¹ G.S. 108A-57(a3).

¹² G.S. 108A-57(d).